IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2744 OF 2003
IN
SUIT NO. 2223 OF 1994

Hohammed Hussain Abdullabhai ..Plaintiff.

Versus

Taherbhai Abdullabhai & Ors. ..Defendants.

Mr. S.Walloodin for the Applicants.

Mr. Subodh Joshi i/by Nandlal Kothari & Sabir for the Plaintiff.

Mr. M. Vasudeo with K. Setalvad with Paul P.P. i/by Nanu Hormasjee & Co. for for the defendants Nos. 1 - 3, 5 and 6.

CORAM : S. J. VAZIFDAR, J.
DATED : 25TH NOVEMBER,2005.

P.C.:

1. This notice of motion is taken out by defendants Nos. 1-3, 5 and 6 for an order dismissing the suit as withdrawn.

2. The case of defendants Nos. 1-3, 5 and 6 (hereinafter referred to as ‘these defendants’) is that the disputes and differences between the partners were referred to the sole arbitrator- Mr. Justice M.L.Pendse (Retd.). The learned Arbitrator made an Award dated 5th February, 2002 in terms of the consent terms dated 26th April, 1999 and supplementary consent

terms dated 15th September, 2000. Under clause (k) of the supplementary consent terms, the plaintiff had agreed that an application will be made on or before 20th October, 2000 to withdraw the above suit and to get order of discharge of the Court Receiver without passing accounts.

3. The said consent terms contain reciprocal obligation to be performed by the parties. The relief sought is in effect of enforcement of a certain part of the award. This is even, assuming that these defendants have fulfilled their obligation under the said Award and are entitled to enforce clause (k) of the supplementary consent terms.

4. As rightly pointed out by the learned counsel appearing for the other parties, these defendants ought to have sought the relief, sought for in this notice of motion, in execution of the said Award.

5. In view of this, it is not necessary for me to consider the notice of motion on the basis of Order 7, Rule 11 of the C.P.C..

6. Notice of motion is dismissed.

7. It is hereby clarified that the same shall not in any manner prejudice the rights of these defendants to seek execution of the said Award including for the reliefs claimed in this notice of motion.

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